(1)SBCivil Writ Petition No.3768/2005
(Sgt.G.N.Muralidhar v. Union of India & Ors.)

(2)SBCivil Writ Petition No.3769/2005
(Sgt.G.Shaji v. Union of India & Ors.)

(3)SBCivil Writ Petition No.3770/2005
(Sgt.S.K.Kabra v. Union of India & Ors.)

Date of Order :: 21st July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Pushpendra Singh, for the petitioners.
Mr. Vineet Mathur, for the respondents.

....

Reportable

The criteria for promotion from the rank of Sargent to the rank of Junior Warrant Officer in the Indian Air Force in accordance with the promotion policy dated 23.9.2002 is that an Airman must have completed 17 years length of service as on 30th of June of the year preceding promotion penal.

The small issue involved in these petitions for writ is the determination of date of completion of 17 years of length of service by the petitioners, date of appointment of whom is 1.7.1988 with the rank of Sargent.

According to the petitioners being appointed on 1.7.1988 they have competed 17 years of service on 30.6.2005 whereas the stand of the respondents is that the petitioners completed 17 years of service at zero

hours on 1.7.2005 i.e. 12 P.M. on 30.6.2005, therefore, they are not eligible to be promoted as Junior Warrant Officer.

The counsel for the petitioners to substantiate the claim of the petitioners has placed reliance upon a judgment of Hon'ble Supreme Court in the case of Prabhu Dayal Sesma v. State of Rajasthan & Anr., reported (1986)4 SCC 59. In the case of Prabhu Dayal Sesma (supra) Hon'ble Supreme Court while determining the issue pertaining to attainment of age of 28 years on 1st day of January of the year held as under:-

> "7.Undoubtedly, the Union Public Service Commission has been interpreting the provision as to attainment of age in a like manner. This would be clear from the advertisement issued by it on December 8, 1984 which is in these terms:
>
> > Age limit: (ka) The candidate should have attained the age of 21 years on August 1, 1985, but should not have attained the age of 26 years, that is, he should not have born before August 2, 1959 and after August 1, 1964.
>
> We are afraid, the interpretation of Rule 11-B of the Rules cannot proceed upon the basis adopted by the Union Public Service Commission.

8.Rule 11-B of the Rules provides:

11-B.Age.-Notwithstanding anything contained regarding age limit in any of the service Rules governing through the agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by combined competitive examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application.

9.It is plain upon the language of Rule 11-B that a candidate must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application. Last day fixed for receipt of application i this case, was January 1, 1983. First day of January next following the day would be January 1, 1984. The object and intent in making Rule 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the

specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

14.It is in recognition of the difference between how a person's age is legally construed and how it is understood in common parlance. The legislature has expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

> 4.Age of majority how computed.--In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth

anniversary of that day."

> The section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decision in G.Vatsala Rani case."

While relying upon the criteria of determining age on basis of law laid down by Hon'ble Supreme Court in the case of Prabhu Dayal Sesma (supra) it is urged by counsel for the petitioners that the petitioners completed 17 years length of service on 30.6.2005 as every fraction of that day is required to be treated as a complete day.

Per contra, counsel for the respondents has stated that in the instant matter the requirement of law is that an Airman must have completed 17 years length of service to be considered for promotion as Junior Warrant Officer. The law laid down by Hon'ble Supreme Court in the case of Prabhu Dayal Sesma (supra) nowhere deals with the completion of length of service as the question before Hon'ble Supreme Court in that case was with regard to attainment of age and not of completion of length of service.

Heard counsel for the parties.

In the case of Prabhu Dayal Sesma (supra) Hon'ble Supreme Court considered the issue with regard to attainment of a specific age and held that a legal day commence at 12 o'clock midnight and continue until the same hour the following night and a fraction of a day will be treated as a full day. Accordingly a person born on January 2, 1956 will attain the age of 28 years at zero hours on January 1st, 1984 and complete the same at 12 o'clock midnight of the same day. Hon'ble Supreme Court in the case of Prabhu Dayal Sesma (supra) also dealt with the term “attainment of age” on basis of provision of Section 4 of the Indian Majority Act, 1875 wherein it is expressly provided that while computing the age of any person, the day on

which he was born is to be included as a whole day and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day. Meaning thereby, while determining attainment of age the day on which the person has born is to be included as a whole day and he must be deemed to have attained majority at the beginning of anniversary day of his birth.

In the instant matters the issue involved is not with regard to attainment of age but pertains to computing complete length of service. The provision relating to eligibility criteria for promotion from the rank of Sargent to Junior Warrant Officer reads as under:-

> "Eligibility Criteria For Promotion
>
> 2. All airmen who have completed the minimum length of service as mentioned below for promotion to the rank of JWO and above as on 30 Jun of the year (preceding the promotion panel), would be considered for promotion (Eg 30 Jun 03 for promotion year 2003-04):
>
> | Rank | Min Length of Services |
> |---|---|
> | (a) Sgt to JWO | 17 Yrs." |

From reading of of the provision above it is clear that mandatory condition required to be considered for promotion from Sargent to Junior Warrant Officer is that the incumbent must have completed minimum length of service for 17 years. In view of it the terms required to be taken into consideration in present cases are “completed the minimum length of service”.

In present matters the the term “completed length of service” is quite important. It is not the attainment of 17 years of service but is completion of 17 years of service. The completion of minimum length of service for certain years means the completion of the last day of year. While assessing attainment of age a fraction of day is sufficient to determine the requisite age but in determination of year of complete length of service a complete day is required to be taken into consideration and not its fraction. Meaning thereby, if a person is appointed on 1.7.1988, he will complete 17 years of service at zero hours in the intervening night of 30.6.2005 and 1.7.2005. Such a person cannot be treated to have completed 17 years of service prior to zero hours of 1.7.2005. In the case of Prabhu Dayal Sesma (supra) it was held that on January 1st the employee not only attained the age of 28 years but also completed the age of 28 years. The

attainment and completion are two different terms. A term is attained at inception of the day but for completion whole day is to be passed over. A complete day cannot be completed just by a fraction of day.

The petitioners, therefore, being entered in services in the rank of Sargent on 1.7.1988 cannot be held to have completed 17 years of length of service on 30.6.2005. The petitioners complete 17 years of service only at zero hours on 1.7.2005.

In view of it, I do not find any force in the claim made by the petitioners. The respondents rightly did not consider candidature of the petitioners for the purpose of promotion to the rank of Junior Warrant Officers against the vacancies arising in 2005.

The writ petitions, therefore, are dismissed with no order to costs.

(GOVIND MATHUR),J.

kkm/ps.